IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1284 (M/S) OF 2006

1. Smt. Munija Wife of Masum,
   Resident of Village Jhiriyan Grant,
   Pargana, Roorkee, Tehsil and District Haridwar.
2. Masum Son of Sri Safi,
   Resident of Village Jhiriyan Grant, Pargana, Roorkee,
   Tehsil and District Haridwar. ..... **Petitioners**

Vs

1. Collector Haridwar, District Haridwar.
2. Jagdish Prasad Chauhan S/o Sri Chander Pal Singh.
   Resident of Suman Place-C-103 Sri Ramnagar Colony,
   Jwalapur, Pargana Jwalapur, Tehsil and District
   Haridwar. .....**Respondents**

Sri Pawan Kumar learned counsel for the petitioners.
Sri R.C. Arya learned Standing counsel for the respondent No.1.

Dated: 07-09-2006

Hon'ble B.S. Verma, J.

Heard Sri Pawan Kumar learned counsel for the petitioners and Sri R.C. Arya learned Standing counsel for the respondent No.1.

2. By the present writ petition the petitioner has prayed for quashing the order dated 10-8-2006 (Annexure-6) passed by the Collector, Haridwar whereby the Collector Haridwar has allowed the revision petition filed by the respondent No.2 and set aside the order dated 25-2-2006 passed by the Tehsildar, who had allowed restoration application moved by the petitioners.

3. According to the petitioner Safi who was the father-in-Law of the petitioner No.1 and original tenure holder of the land in dispute had executed a will in favour of petitioner No.1 on 20-12-1990. Smt. Munija wife of Masum Ali. On the mutation application which was moved by petitioner No.1 in mutation case No.66 of 2004 Masum

Vs. Safi and others was registered and on 15.6.2004, the mutation was made in her favour on the basis of the will dated 20-12-1990, on 2-7-2004 and the order of the revenue inspector of P.A 11 dated 10-9-1991 has been set aside.

4. The learned counsel for the petitioner has contended that the petitioner No.1 had moved the restoration application on 8-2-2005 in case No.66/04 to set aside the order of mutation dated 18-6-2004, which was made in favour of respondent No.2 Jagdish Singh Chauhan on the basis of sale deed which was excluded in pursuance of decree of specific performance on behalf of petitioner No.2 Masum S/o Sri Safi, which was allowed on 25-2-2006 and the order dated 15-6-2004 has been set aside which was in favour of the respondent No.2 Jagdish Prasad Chauhan.

5. Aggrieved by the said order the respondent No.2 preferred a Revision No.30 of 2005-2006 before Collector, Haridwar Jagdish Prasad Chauhan Vs. Smt. Munija and others. The revision was allowed by the Collector, Haridwar vide order dated 10-8-2006 and the order passed by the Tehsildar on the restoration application moved by the respondent No.1 has been set-aside. Aggrieved by the said order of the Collector, the petitioners have preferred the present writ petition.

7. Admittedly, the proceedings were initiated by the parties under Section 34/35 of the U.P. Land Revenue Act and the proceedings are summary in nature.

8. It reveals from the Khatauni Fasli year 1412-1419(Annexure-2) when the order was passed by the Tehsildar in favour of the petitioner No.1, on the basis of alleged will dated 20-12-1990, the name of Sri Jagdish Prasad Chauhan was recorded in the main column of Khatauni and the mutation order was passed in favour of the respondent No.2, Sri Jagdish Prasad Chauhan by Tehsildar on

18-6-2004 prior to the mutation order made in favour of petitioner No.1. On that day the order of Tehsildar that the name of Masum Ali be expunged and the name of the petitioner No.1 and Roshan be recorded was against the entry of revenue record because on that day the name of the of Masum Ali did not exist in entry of Column No.1 of Khatauni.

9. Section 40 (A) of the U.P. Land Revenue Act, which reads as under:-

> *"Savings as to title suits- No order passed under Section 33, section 34, section39, section 40, section 41, or section 54 shall bar any suit in a competent Court for relief on the basis of a right in a holding"*

10. A perusal of the above provision in Section 40-A would show that a person aggrieved by the order passed in the mutation proceedings under Section 34/35 of the U.P. Land Revenue Act can challenge it on regular side and judgment of Court shall over-ride the order passed in mutation proceedings. In the present case, undisputedly alternative remedy to bring a suit in regular Court is available to the petitioner as provided by Section 40-A of the U.P. Land Revenue Act. The petitioner has alternate remedy to file a suit before the competent court.

11. In view of the aforesaid provision, therefore, I am not inclined to entertain the writ petition against the mutation proceedings, which are summary in nature. The writ petition is devoid of merit and is dismissed in limine. However, the petitioner may file regular suit in the competent court of jurisdiction.

(B.S. Verma,J)

Dated: 7-9-2006
M.K.